Ahmad Zul-Qarnain bin Ibrahim (on behalf of the Mental Health Committee of Dato' Puan Sri Hamidah bt Abdullah) v WRP Asia Pacific Sdn Bhd & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO WA-22NCC-68–02 OF 2022
ADLIN ABDUL MAJID J
31 AUGUST 2023

Civil Procedure — Striking out — Application to strike out action — Plaintiff filed action against defendants to recover debt — Plaintiff's action against second defendant premised on conspiracy to defraud — Second defendant filed application to strike out plaintiff's action — Whether second defendant as auditor had intentionally extinguished debt by providing qualified opinions in financial statements — Whether in giving qualified opinions second defendant committed act of conspiracy — Whether plaintiff's action against second defendant obviously unsustainable — Whether this was a fit and proper case to strike out plaintiff's claim against second defendant — Rules of Court 2012 O 18 r 19(1)

Companies and Corporations — Auditors — Powers and duties — Companies Act 2016 s 266

Tort — Conspiracy — Conspiracy to defraud — Plaintiff filed action against defendant to recover debt — Plaintiff's action against second defendant premised on conspiracy to defraud — Whether second defendant as auditor had intentionally extinguished debt by providing qualified opinions in financial statements — Whether in giving qualified opinions second defendant committed act of conspiracy — Whether second defendant acting in concert with other defendants, resulting in an agreement with predominant purpose of injuring plaintiff

The plaintiff in the present case was the legal representative of his mother, Dato' Puan Sri Hamidah Abdullah ('Puan Sri Hamidah'). The first defendant was a company principally involved in the business of manufacturing and marketing of disposable gloves, urological catheters and other related products and services. The second defendant was an audit, tax and advisory firm. The plaintiff, on behalf of Puan Sri Hamidah, had filed an action against the defendants to recover an outstanding debt owed by the first defendant to Puan Sri Hamidah amounting to RM6,145,000 ('PSH Debt'). The plaintiff's cause of action against the defendants was for conspiracy to defraud. As against the second defendant, the plaintiff claimed that the second defendant had

intentionally extinguished the PSH Debt by providing qualified opinions on the 'Amount due to Directors' in the financial statements in 2018, 2019, 2020 and 2021. The second defendant had filed an application to strike out the plaintiff's claim against it pursuant to O 18 r 19(1) of the Rules of Court 2012 ('the ROC'). The issue arose was whether in giving the qualified opinions, the second defendant committed an act of conspiracy against the plaintiff.

Held, allowing the striking out application with costs:

(1) The second defendant was engaged as auditors of the first defendant, by way of a letter of engagement dated 14 July 2022 ('the letter of engagement'). The powers and duties imposed on auditors as set out in s 266 of the Companies Act 2016 ('the CA 2016') were intended to ensure that companies' financial statements were prepared in accordance with applicable accounting standards, and that auditors' reports would highlight any concerns arising from financial statements. The court found that the letter of engagement, and specifically para 2, reflected these duties (see paras 26, 31 & 34-35).

(2) The court was unable to agree with the plaintiff that the PSH Debt was extinguished because the first defendant's financial statements for financial years ended 2018, 2019, 2020 and 2021 showed that the item 'Amount due to Directors' was provided for under the item 'Current Liabilities' (see paras 38–39).

(3) The second defendant had explained the bases of the qualified opinions in the auditors' reports for the financial years ended 2018, 2019, 2020 and 2021. The bases of the qualified opinions were consistent every year, namely that the second defendant was unable to: (a) carry out audit procedures to verify the existence of the 'Amount due to Directors'; (b) obtain sufficient appropriate audit evidence on the 'Amount due to Directors'; and (c) determine whether any adjustments to these amounts were necessary. Further, the second defendant, in its affidavit in support of the striking out application, had given justifications for the qualifications, ie, the second defendant was not provided with the relevant documents or information from the directors of the first defendant. Based on the bases for the qualified opinions and the justifications provided by the second defendant to qualify its opinions, the court was unable to see how the provision of the qualified opinions by the second defendant could amount to an act of conspiracy. In making the qualified opinions, the second defendant was acting in accordance with its statutory obligations under s 266 of the CA 2016 (see paras 40–42 & 45).

(4) For the plaintiff to succeed in a claim for conspiracy to cheat or defraud, the following requirements would need to be met: (a) there must be an agreement or a combination of efforts between the defendants; (b) the

predominant purpose of the agreement was to injure the plaintiff; (c) acts had been done by the defendants in the execution of the agreement; and (d) the acts had resulted in damages to the plaintiff. In this case, it was clear that the primary and predominant purpose of the qualified opinions was to comply with statutory requirements. There was also no evidence of the second defendant acting in concert with other defendants, resulting in an agreement with the predominant purpose of injuring the plaintiff. On the contrary, the second defendant had acted independently and in a manner consistent with its statutory and contractual duties, in its treatment of the PSH Debt in the auditors' reports (see paras 46–47).

(5) It was settled law that recourse to the summary procedure of striking out under O 18 r 19(1) of the ROC should only be allowed in plain and obvious cases. With the court's finding that there was sufficient documentary evidence to show that the 'Amount due to Directors' in the financial statements was qualified in a manner consistent with the requirements of the CA 2016 and to ensure the second defendant's compliance with the CA 2016, there was therefore no reasonable cause of action against the second defendant. The court found that the plaintiff's action against the second defendant was obviously unsustainable and that this was a fit and proper case for the court to strike out the plaintiff's claim against the second defendant (see paras 48–49).

[Bahasa Malaysia summary

Plaintif dalam kes ini adalah wakil sah ibunya, Dato' Puan Sri Hamidah Abdullah ('Puan Sri Hamidah'). Defendan pertama ialah sebuah syarikat yang terlibat terutamanya dalam perniagaan pembuatan dan pemasaran sarung tangan pakai buang, kateter urologi dan produk dan perkhidmatan lain yang berkaitan. Defendan kedua ialah firma audit, cukai dan penasihat. Plaintif, bagi pihak Puan Sri Hamidah, telah memfailkan tindakan terhadap defendan-defendan untuk mendapatkan semula hutang tertunggak yang terhutang oleh defendan pertama kepada Puan Sri Hamidah berjumlah RM6,145,000 ('Hutang PSH'). Kausa tindakan plaintif terhadap defendan-defendan adalah berasaskan konspirasi untuk menipu. Terhadap defendan kedua pula, plaintif mendakwa defendan kedua dengan sengaja telah memadamkan Hutang PSH tersebut dengan memberikan pendapat yang berkelayakan mengenai 'Amaunt due to Directors' dalam penyata kewangan pada 2018, 2019, 2020 dan 2021. Defendan kedua telah memfailkan permohonan untuk membatalkan tuntutan plaintif terhadapnya menurut A 18 k 19(1) Kaedah-Kaedah Mahkamah 2012 ('KKM 2012'). Isu yang timbul ialah sama ada dalam memberikan pendapat yang berkelayakan tersebut, defendan kedua melakukan perbuatan konspirasi terhadap plaintif.

Diputuskan, membenarkan permohonan pembatalan dengan kos:

(1) Defendan kedua telah dilantik sebagai juruaudit defendan pertama,

melalui surat lantikan bertarikh 14 Julai 2022 ('surat lantikan tersebut'). Kuasa dan kewajipan yang dikenakan ke atas juruaudit seperti yang dinyatakan dalam s 266 Akta Syarikat 2016 ('AS 2016') bertujuan untuk memastikan penyata-penyata kewangan syarikat disediakan mengikut piawaian perakaunan yang terpakai, dan laporan juruaudit akan menyerlahkan apa-apa kebimbangan yang timbul daripada penyata-penyata kewangan. Mahkamah mendapati bahawa surat lantikan tersebut, dan khususnya perenggan 2, mencerminkan kewajipan ini (lihat perenggan 26, 31 & 34-35).

(2) Mahkamah tidak dapat bersetuju dengan plaintif bahawa Hutang PSH tersebut telah dipadamkan kerana penyata-penyata kewangan defendan pertama bagi tahun kewangan berakhir 2018, 2019, 2020 dan 2021 menunjukkan bahawa item 'Amount due to Directors' dinyatakan di bawah item 'Current Liabilities' (lihat perenggan 38–39).

(3) Defendan kedua telah menjelaskan asas-asas bagi pendapat yang berkelayakan tersebut dalam laporan-laporan juruaudit bagi tahun kewangan berakhir 2018, 2019, 2020 dan 2021. Asas-asas pendapat yang berkelayakan tersebut adalah konsisten setiap tahun, iaitu defendan kedua tidak dapat: (a) menjalankan prosedur audit untuk mengesahkan kewujudan 'Amount due to Directors'; (b) mendapatkan bukti audit bersesuaian yang mencukupi mengenai 'Amount due to Directors'; dan (c) menentukan sama ada apa-apa pelarasan kepada jumlah ini adalah perlu. Selanjutnya, defendan kedua, dalam afidavitnya untuk menyokong permohonan pembatalan, telah memberikan justifikasi untuk kelayakan-kelayakan tersebut, iaitu, defendan kedua tidak diberikan dokumen atau maklumat yang berkaitan daripada pengarah defendan pertama. Berdasarkan asas-asas bagi pendapat yang berkelayakan tersebut dan justifikasi yang diberikan oleh defendan kedua untuk melayakkan pendapatnya, mahkamah tidak dapat melihat bagaimana pemberian pendapat yang berkelayakan tersebut oleh defendan kedua boleh berjumlah kepada satu tindakan konspirasi. Dalam membuat pendapat yang berkelayakan tersebut, defendan kedua bertindak mengikut kewajipan berkanunnya di bawah s 266 AS 2016 (lihat perenggan 40–42 & 45).

(4) Bagi membolehkan plaintif berjaya dalam tuntutan konspirasi untuk menipu atau melakukan fraud, keperluan-keperluan berikut perlu dipenuhi: (a) mesti ada perjanjian atau gabungan usaha antara defendan-defendan; (b) tujuan utama perjanjian tersebut adalah untuk mencederakan plaintif; (c) perbuatan tersebut telah dilakukan oleh defendan-defendan dalam pelaksanaan perjanjian tersebut; dan (d) perbuatan tersebut telah mengakibatkan kerugian kepada plaintif. Dalam kes ini, adalah jelas bahawa tujuan primer dan utama pendapat yang berkelayakan tersebut adalah untuk mematuhi keperluan

berkanun. Tiada juga keterangan defendan kedua bertindak bersama-sama dengan defendan-defendan lain yang menyebabkan persetujuan dengan tujuan utama untuk mencederakan plaintif. Sebaliknya, defendan kedua telah bertindak secara bebas dan mengikut cara yang konsisten dengan kewajipan berkanun dan kontraknya, dalam layanannya terhadap Hutang PSH tersebut dalam laporan-laporan juruaudit (lihat perenggan 46–47).

(5) Telah menjadi undang-undang yang mantap bahawa permohonan prosedur terus untuk pembatalan di bawah A 18 k 19(1) KKM 2012 hanya dibenarkan dalam kes yang terang dan jelas. Dengan dapatan mahkamah bahawa terdapat keterangan dokumen yang mencukupi untuk menunjukkan bahawa 'Amount due to Directors' dalam penyata-penyata kewangan tersebut adalah berkelayakan mengikut cara yang konsisten dengan keperluan AS 2016 dan untuk memastikan defendan kedua mematuhi AS 2016, maka dengan itu tiada kausa tindakan yang munasabah terhadap defendan kedua. Mahkamah mendapati bahawa tindakan plaintif terhadap defendan kedua adalah jelas tidak mampan dan ini adalah kes yang sesuai dan wajar untuk mahkamah membatalkan tuntutan plaintif terhadap defendan kedua (lihat perenggan 48– 49).]

Cases referred to

Bandar Builder Sdn Bhd & Ors v United Banking Corporation Bhd [1993] 3 MLJ 36, SC (refd)

Cubic Electronic Sdn Bhd v MKC Corporate & Business Advisory Sdn Bhd and another appeal [2016] 3 MLJ 797, CA (refd)

Legislation referred to

Companies Act 2016 s 266, 266(2)(a), (2)(b), (3)

Rules of Court 2012 O 18 r 19(1)

Gideon Tan (with Yip Man Fei) (Gideon Tan Razali Zaini) for the plaintiff.
Ben Chan (with Sangeetha Vasanth Kumar) (Ben Chan) for the second defendant.

Adlin Abdul Majid J:

INTRODUCTION

[1] The second defendant filed an application to strike out the writ of summons and statement of claim against it ('striking out application').

[2] I allowed the striking out application, and provided brief reasons for my decision. These are the full grounds of my decision.

BACKGROUND FACTS

The parties

[3] The plaintiff is the legal representative of his mother, Dato' Puan Sri Hamidah Abdullah ('Puan Sri Hamidah').

[4] The first defendant is a company principally involved in the business of manufacturing and marketing of disposal gloves, urological catheters and other related products and services.

[5] The second defendant is an audit, tax and advisory firm.

[6] The first defendant was initially substantially owned by the plaintiff's father, Tan Sri Ibrahim Mohamed ('Tan Sri Ibrahim') and the plaintiff's family. However, in 2013, the plaintiff's family divested their shareholding in the first defendant.

[7] TAEL partners Ltd ('TAEL partners') invested and acquired shares in the first defendant by providing a financing facility to the first defendant in the sum of RM50m, via facility agreements executed in October 2013 ('WRP-TAEL agreements').

[8] Following the investment, the third defendant, a director of TAEL partners, was appointed as a director of the first defendant.

History of the debt

[9] The plaintiff's claim against the defendants arises from a debt allegedly owed to Puan Sri Hamidah.

[10] The facts leading to the alleged debt are complicated.

[11] In 2003, the first defendant restructured its debt obligations amounting to RM197m to Standard Chartered Bank Malaysia Bhd ('SCBM') and Standard Chartered Bank Offshore, Labuan ('SCBL'). The debt restructuring exercise involved the cancellation of the first defendant's debts to SCBM, while the debt owing to SCBL was purchased by entities related to Ashmore Investment Management Ltd ('Ashmore'), and restructured as a debt of USD14,105,263.

[12] Harvest Asset Invest Ltd ('HAIL') was subsequently incorporated by Tan Sri Ibrahim to purchase the first defendant's debt from Ashmore. HAIL

A acquired the debt of USD14,105,263 from Ashmore, through a debt restructuring agreement dated 29 June 2010 between HAIL and the first defendant. This involved a debt of RM75,208,636.

B **[13]** Following the financing facility provided by TAEL pursuant to the WRP-TAEL agreements, the terms of the debt and repayment obligations with HAIL were restructured by way of an agreement dated 2 June 2014 between the first defendant and HAIL, with the indebtedness reduced to RM18,405,272.89.

C **[14]** Simultaneously, Puan Sri Hamidah, Dato' Lee Son Hong (who was a director of the first defendant) ('Dato' Lee') and HAIL executed a debt repayment agreement dated 2 June 2014. In the agreement:

D (a) HAIL acknowledged that Puan Sri Hamidah and Dato' Lee advanced monies to HAIL for investment purposes;

(b) the amount owed by HAIL to Puan Sri Hamidah was acknowledged to be RM12,071,770.50 and to Dato' Lee, RM6,333,502.39; and

E (c) HAIL agreed to pay the debt with interest, based on a schedule of payments.

[15] The plaintiff claimed that in memorandums dated 26 April 2016 and 26 September 2016, the first defendant acknowledged the debt and the first F defendant's obligation to repay the debt.

The plaintiff's claim

[16] It is the plaintiff's case that there is an outstanding balance of G RM6,145,000 of the debt (excluding interest), which is due and owing to Puan Sri Hamidah ('PSH debt'). This action is filed to recover the PSH debt.

[17] The plaintiff claimed that the defendants have full knowledge of the PSH debt, but failed to acknowledge the debt. As such, the plaintiff alleged H that the defendants had by their conduct unlawfully and/or fraudulently conspired to cheat or defraud the plaintiff of the PSH debt.

THE STRIKING OUT APPLICATION

I **[18]** The second defendant filed the striking out application pursuant to O 18 r 19(1) of the Rules of Court 2012 ('the ROC'), to strike out the plaintiff's claim against it.

[19] It must be noted that the first and third defendants also filed applications to strike out the plaintiff's claim against them. However, I found that the nature of the plaintiff's claim against the first and third defendants, with allegations of conspiracy to defraud, necessitates a full trial of this action. I also found that the questions of whether the PSH debt was acknowledged by the first defendant, the knowledge and role of the third defendant and whether the debt was paid by the first defendant, are issues that can only be determined at the full trial of this matter. As such, I dismissed the first and third defendants' application to strike out the plaintiff's claim against them.

[20] However, I took a different view in relation to the claim against the second defendant. I found the claim against the second defendant to be obviously unsustainable, and I allowed the striking out application.

CONSIDERATIONS AND FINDINGS

The plaintiff's claim against the second defendant

[21] The plaintiff's cause of action against the defendants is for conspiracy to defraud. It is the plaintiff's case that the defendants had conspired to cheat or defraud the plaintiff of the PSH debt.

[22] Specifically as against the second defendant, the plaintiff claimed that the PSH debt, described as an 'Amount due to Directors' and/or 'Fixed Deposits belonging to two directors and a person connected to the directors' had appeared in the 'Statement of Financial Position' ('financial statement') of the first defendant between 2010 to 2017, which were filed by the previous auditors of the first defendant.

[23] The plaintiff claimed that the second defendant had intentionally extinguished the PSH debt. The second defendant was alleged to have done so by providing qualified opinions on the 'Amount due to Directors' in the financial statements in 2018, 2019, 2020 and 2021.

[24] Thus, the question arising is whether in giving the qualified opinions, the second defendant committed an act of conspiracy against the plaintiff.

The duties and obligations of the second defendant

[25] To address this question, I will first consider the duties and obligations of the second defendant in the provision of the 'Independent auditors' report to the Members of WRP Asia Pacific Sdn Bhd' ('auditors' report').

[26] The second defendant was engaged as auditors of the first defendant, by way of a letter of engagement dated 14 July 2022 ('letter of engagement'), issued by the second defendant to the first defendant. The letter of engagement provides that the objectives of the audit are to '... obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditors' report that includes our opinion ...'.

[27] The letter of engagement also sets out the responsibilities of the second defendant as auditors of the first defendant. Paragraph 2(a) provides that the second defendant is required to examine the financial statements and report on whether they have been properly drawn up in accordance with approved accounting standards.

[28] Paragraph 2 then goes on to state:

> b. Where, in our opinion, the financial statements have not been drawn up in accordance with a particular applicable approved accounting standard in Malaysia, we are required to state in accordance with the Act:
>
> i. whether in our opinion, the financial statements would, if drawn up in accordance with that approved accounting standard In Malaysia, have given a true and fair view of the matters required by the Act to be dealt with in the financial statements;
>
> ii. whether in our opinion, the financial statements would not, if drawn up in accordance with that approved accounting standard in Malaysia, have given a true and fair view of the matters required by the Act and the reasons for holding that opinion;
>
> iii. if the Directors have given the particulars of the quantified financial effect, our opinion concerning the particulars; and
>
> iv. in a case to which neither subparagraph (ii) nor (iii) applies, particulars of the quantified financial effect on the financial statements of the failure to so draw up the financial statements.
>
> c. We are required by the Act to state in our auditors' report any defect or irregularity in the financial statements and any matter not set in the financial statements without regard to which a true and fair view of the matters dealt with by the financial statements would not be obtained.

[29] These responsibilities of the second defendant are consistent with the objectives of the audit, which are to provide the first defendant with reasonable assurance on whether the financial statements are free from material misstatements, and to issue the auditors' report. To this end, the second defendant must examine the financial statements in accordance with approved standards.

[30] If the financial statements have not been drawn up in accordance with approved accounting standards, para 2(b) of the letter of engagement requires the second defendant to state so.

[31] This requirement is consistent with s 266 of the Companies Act 2016 ('the CA 2016'), which sets out the powers and duties of auditors in the preparation of auditors' reports.

[32] Section 266(2)(a) provides that an auditor shall state in the auditors' report whether the financial statements of the company are in his opinion properly drawn up so as to give a fair view of matters to be dealt with in the financial statement, in accordance with the CA 2016 and in accordance with the applicable accounting standards. Section 266(2)(b) then goes on to address a scenario where the auditor is of the opinion that the financial statements have not been drawn up in accordance with applicable accounting standards. In such a case, the auditor is required to state, amongst others, whether in his opinion, if the financial statements had been drawn up in accordance with approved accounting standards, they would have given a true and fair view of matters required to be dealt with in the financial statements.

[33] Further, s 266(3) of the CA 2016 provides that:

> (3) An auditor of a company shall have a duty to form an opinion to each of the following matters:
>
> (a) whether he has obtained all the information and explanations that he required;
>
> (b) whether proper accounting and other records, including registers, have been kept by the company as required by this Act ...

[34] The powers and duties imposed on auditors as set out in s 266 of the CA 2016 are intended to ensure that companies' financial statements are prepared in accordance with applicable accounting standards, and that auditors' reports would highlight any concerns arising from financial statements.

[35] The letter of engagement, and specifically para 2, reflects these duties.

Qualified opinions provided by the first defendant

[36] It is not in dispute that in the auditors' report of the first defendant for the financial years ended 2018, 2019, 2020 and 2021, the second defendant provided qualified opinions on the 'Amounts due to Directors' in the financial statements.

[37] The plaintiff's case is that in providing these qualified opinions, the second defendant had intentionally extinguished the PSH debt.

[38] I am unable to agree that the PSH debt was extinguished. A closer look at the first defendant's financial statements for financial years ended 2018, 2019, 2020 and 2021 will reveal that the item 'Amount due to Directors' is provided for under the item 'Current Liabilities'. The amounts are reflected as follows:

(a) for financial year ended 2018, RM6,109,669;

(b) for financial year ended 2019, RM16,580,615;

(c) for financial year ended 2020, RM15,969,881; and

(d) for financial year ended 2021, RM15,969,881.

[39] Thus, it is clear that the PSH debt was not extinguished, but would have been set out in the 'Amount due to Directors' under the item 'Current Liabilities' in the first defendant's financial statements for the financial years ended 2018, 2019, 2020 and 2021.

[40] The second defendant did however provide qualified opinions of the 'Amount due to Directors' in the financial statements. The basis of the qualified opinions is explained in each auditors' report:

(a) in the auditors' report for the financial year ended 2018, the basis of the qualified opinion is stated to be as follows:

> The Company's amount due to Directors carried at RM6,109,669 on the statement of financial position as at 30 June 2018 is unable to carry out audit procedures to verify the existence of the balances. We are unable to obtain sufficient appropriate audit evidence about the carrying amount of amount due to Directors amounted to RM6,109,669. Consequently, we were unable to determine whether any adjustments to these amounts were necessary.

(b) in the auditors' report for the financial year ended 2019, the basis of the qualified opinion is stated to be as follows:

> The Company's amount due to Directors and amount due to a related party carried at RM16,580,615 and RM700,000 respectively on the statement of financial position as at 30 June 2019 are unable to carry out audit procedures to verify the existence of the balances. We are unable to obtain sufficient appropriate audit evidence about the carrying amount due to directors amounted to RM16,580,615 and amount due to a related party amounted to RM700,000. Consequently, we were unable to determine whether any adjustments to these amounts were necessary.

(c) in the auditors' report for the financial year ended 2020, the basis of the qualified opinion is stated to be as follows:

> The Company's amount due to Directors and amount due to a related party carried at RM15,969,881 and RM2,320,000 respectively on the statement of financial position as at 30 June 2020 are unable to carry out audit procedures to verify the existence of the balances. We are unable to obtain sufficient appropriate audit evidence about the carrying amount due to Directors amounted to RM15,969,881 and amount due to a related party amounted to RM2,320,000. Consequently, we were unable to determine whether any adjustments to these amounts were necessary.

(d) in the auditors' report for the financial year ended 2021, the basis of the qualified opinion is stated to be as follows:

> The Company's amount due to Directors and amount due to a related party carried at RM15,969,881 and RM2,320,000 respectively on the statement of financial position as at 30 June 2021 are unable to carry out audit procedures to verify the existence of the balances. We are unable to obtain sufficient appropriate audit evidence about the carrying amount due to Directors amounted to RM15,969,881 and amount due to a related party amounted to RM2,320,000. Consequently, we were unable to determine whether any adjustments to these amounts were necessary.

[41] The bases of the qualified opinions were consistent every year, namely that the second defendant was unable to:

(a) carry out audit procedures to verify the existence of the 'Amount due to Directors';

(b) obtain sufficient appropriate audit evidence on the 'Amount due to Directors'; and

(c) determine whether any adjustments to these amounts are necessary.

[42] In the second defendant's affidavit in support of the striking out application, justifications for the qualifications were given. In particular, the second defendant explained that they were not provided with the relevant documents or information from the directors of the first defendant.

[43] This explanation is consistent with the first defendant's allegation that documents were removed from the premises of the first defendant by Dato' Lee, leading the first defendant to file a police report on 22 January 2020. The first defendant also confirmed that the board of the first defendant still does not have full records and/or knowledge of the affairs and transactions entered into by the first defendant while under the control of Dato' Lee.

[44] The second defendant also explained that the item 'Fixed Deposits belonging to two directors and a person connected to the directors', which had previously appeared in the financial statements between 2010 to 2017 was removed, as the second defendant was unable to establish that the fixed

deposits belonged to directors of the first defendant. From audit responses of the first defendant's bank, Ambank (M) Bhd, there was no indication that the fixed deposits with the bank belong to directors of the first defendant, including Puan Sri Hamidah. In my view, this justified the removal of the item 'Fixed Deposits belonging to two directors and a person connected to the directors' from the financial statements.

[45] Having considered the bases for the qualified opinions and the justifications provided by the second defendant to qualify its opinions, I am unable to see how the provision of the qualified opinions by the second defendant could amount to an act of conspiracy. In making the qualified opinions, the second defendant was acting in accordance with its statutory obligations under s 266 of the CA 2016.

The elements of conspiracy

[46] For the plaintiff to succeed in a claim for conspiracy to cheat or defraud, the following requirements would need to be met:

(a) there must be an agreement or a combination of efforts between the defendants;

(b) the predominant purpose of the agreement is to injure the plaintiffs;

(c) acts had been done by the defendants in the execution of the agreement; and

(d) the acts had resulted in damages to the plaintiff,

(see *Cubic Electronic Sdn Bhd v MKC Corporate & Business Advisory Sdn Bhd and another appeal* [2016] 3 MLJ 797).

[47] It is clear that the primary and predominant purpose of the qualified opinions was to comply with statutory requirements. There is also no evidence of the second defendant acting in concert with other defendants, resulting in an agreement with the predominant purpose of injuring the plaintiff. On the contrary, the second defendant had acted independently and in a manner consistent with its statutory and contractual duties, in its treatment of the PSH debt in the auditors' reports.

A plain and obvious case for striking out

[48] It is settled law that recourse to the summary procedure of striking out under O 18 r 19(1) of the ROC should only be allowed in plain and obvious cases (see *Bandar Builder Sdn Bhd & Ors v United Banking Corporation Bhd* [1993] 3 MLJ 36).

[49] With my finding that there is sufficient documentary evidence to show that the 'Amount due to Directors' in the financial statements was qualified in a manner consistent with the requirements of the CA 2016 and to ensure the second defendant's compliance with the CA 2016, I find there to be no reasonable cause of action against the second defendant. It is therefore my finding that the plaintiff's action against the defendant is obviously unsustainable and that this is a fit and proper case for the court to strike out the plaintiff's claim against the second defendant.

DECISION

[50] With the findings as set out, I allowed the striking out application, with costs.

Striking out application allowed with costs.

Reported by Dzulqarnain Ab Fatar